IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 28 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT-TAX

Versus

JAYANTILAL BIKHABHAI

Appearance:

MR BB NAIK for MR MANISH R BHATT for Applicant

SERVED BY RPAD - (N) for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. Income-tax Appellate Tribunal, Ahmedabad Bench `A' has referred the following question under Section 26 of the Gift-tax Act, 1958 (hereinafter to be referred to as "the Act") at the instance of the Commissioner, Gift-tax.

"Whether, on the facts and in the circumstances of the case, the views taken by the C.G.T. (A) as confirmed by the Appellate Tribunal, that the consideration was adequate for transfer of shares at the rate of Rs.1/- per share and that section 4 (1) was not applicable, are correct in law and sustainable from the material on record?"

#. During the course of assessment proceedings for the Assessment Year 1970-71 under the Income-tax Act, 1961, the Income-tax Officer found that the assessee who was holding 125 shares of Testeels (India) Ltd., along with other members of his family was having controlling interest in the said Company by virtue of the cumulative share holding of the family. As the Company was consistently making losses, the assessee and his brothers were trying to sell off the shares and in the process, they entered into an agreement with one Shri Somaiya who wanted to obtain controlling interest in the said Limited Company. As per the terms of the agreement, the assessee along with his two brothers contracted with with Somaiya to sell 10060 at Re. 1/- per share and for the purposes of fulfilling the terms of the contract, the assessee was required to purchase the shares from the open market at the rate of Rs. 50/- per share which was quoted price at the Stock Exchange at the relevant point of time. Accordingly, 5375 shares were sold by the assessee to Shri Somaiya. The assessee claimed loss under the head "Capital Gains" in view of the difference of Rs. 49/= between the market price of the share and the rate at which the shares were transferred to Shri Somaiya, and the Income-tax Officer disallowed the same holding that the consideration for transferring the shares was not Re. 1/= which was stated in the agreement, but was Rs. 50/= taking into consideration the fact that as per the terms of the agreement, Shri Somaiya was absolving the assessee from the liability which the assessee incurred as a guarantor for the loans obtained by the Limited Company from the Bank. This assessment order came to be confirmed by the Income-tax Appellate Tribunal in Income-tax proceedings.

#. Gift-tax Officer initiated proceedings under Section 16(1) of the Act as he was of the opinion that the assessee had parted with the assets for inadequate consideration within the meaning of Section 4(1)(a) of

the Act. After hearing the assessee, the Gift-tax Officer worked out the gift at Rs. 2,63,375/- by invoking the provisions of Section 4(1)(a) of the Act, taking the difference of Rs. 49/- per share as portion of the inadequate consideration.

#. The assessee went in appeal before the Commissioner (Appeals), who for the reasons stated by the Income-tax Appellate Tribunal in Income-tax proceedings held that the real consideration received by the assessee on sale of shares was not only Re. 1/- per share but there was other consideration worth Rs. 49/- per share and hence, it was not possible to hold that the assessee had gifted Rs. 49/- per share to the purchaser Shri Somaiya. The Tribunal confirmed the order of Commissioner (Appeals), by holding that the indemnification by Mr. Somaiya against the bank liability as guarantor was adequate consideration in the transaction relating to the transfer of shares and hence provisions of Section 4(1)(a) of the Act were not applicable in the present case.

#. We have heard Mr. B.B. Naik, learned counsel appearing on behalf of the applicant-Revenue. Though served, none appears on behalf of the respondent-assessee.

#. Mr. Naik contended that the Tribunal was in error in taking into consideration that the liabilities incurred by the assessee in the capacity of guarantor of various loans obtained by the Company from the banks which were indemnified by the purchaser could be said to be consideration in money's worth and hence, the order of the Tribunal should be reversed.

#. Section 4(1)(a) of the Act states that where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor. On a plain reading of this provision, it is apparent that onus is on the authority who invokes the section to show that the transaction was for inadequate consideration. In the present case, it is apparent from the record that the Revenue itself is of the opinion, in Income-tax proceedings, that the assessee is not entitled to capital loss claimed under the head `capital gains' as the value of the shares transferred cannot be the apparent consideration of Re.1/- which is mentioned in the agreement entered into between the transferor and the transferee but shall be Rs.50/=. This stand of the Revenue has been confirmed right upto the level of the

Tribunal and there is nothing on the record to show that the same has been upturned thereafter.

#. Moreover, the liabilities as on the date of transfer had worth in money and were in fact quantified in terms of money as can be seen from the Income-tax proceedings. In light of this fact situation, it is not possible to take a different view of the matter from the one taken by the Tribunal. The concurrent view taken by the C.G.T. (A) and the Tribunal that Section 4 (1)(a) of the Act is not applicable as there was adequate consideration is correct in law. There is no material pointed out from the record to show that any other view was possible in the facts and circumstances of the case.

#. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference is disposed of accordingly with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

*****

pirzada/-